

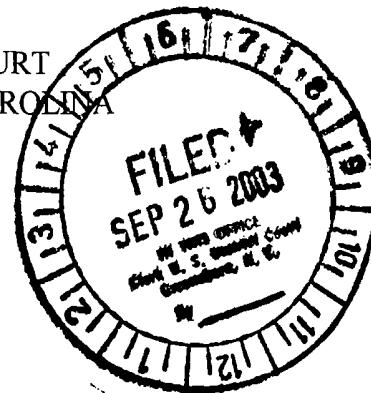
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION
CASE NO. 1:03CV00604



PEDRO LEON MARTINEZ and)
HILDA PEREZ RAFAELI,)
Plaintiffs,)
v.)
AUTO ZONE, INC., and TRU-CUT)
AUTOMOTIVE PRODUCTS,)
Defendants.)

ORDER

FOR GOOD CAUSE SHOWN, the joint motion of the plaintiffs and the defendants to dispose of motions currently pending before the Court and to amend the caption of this action is hereby **GRANTED**. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. Plaintiffs' Third and Seventh Counts, as asserted in their Complaint filed in this matter, are hereby dismissed with prejudice;
2. Defendants' Answer previously filed in this matter is hereby amended to add the following affirmative defense:

FIFTEENTH FURTHER ANSWER AND DEFENSE

Upon information and belief, plaintiff Pedro Leon Martinez was neither the buyer of the auto ramps referenced in the Complaint, a member or a guest of the member of the family of the buyer of the auto ramps referenced in the Complaint, a guest of the buyer of the auto ramps referenced in the Complaint, nor an

employee of the buyer of the auto ramps referenced in the Complaint. Accordingly, plaintiffs fail to meet the privity requirements for warranty claims as set forth in North Carolina General Statute § 99B-2(b) such that plaintiffs' claims for breach of implied warranty as set forth in their Second and Sixth Counts are barred for lack of requisite privity.

No further action on the part of the defendants is necessary to effectuate the amendment of their Answer to assert this additional affirmative defense; and

3. The caption of this action is hereby amended to change the identification of defendant Tru-Cut Automotive Products to "Ganeaux Industries, Inc. d/b/a Tru-Cut Automotive Products" for all further proceedings in this matter.



United States Magistrate Judge